

Appl. No. 10/713,419  
Amdt. Date: 01/20/2006  
Reply to Office Action of 09/14/2005

### **REMARKS/ARGUMENTS**

This response is intended as a full and complete response to the Office Action mailed September 14, 2005, in the above-captioned application.

#### **Claim Rejection Under 35 U.S.C. §112:**

Claims 17-20 stand rejected under 35 USC 112, first paragraph, and claims 11-20 stand rejected under 35 USC 112, second paragraph. Claims 11-20 have been amended herein to more distinctly claim the subject matter of the present invention. Withdrawal of the rejections under 35 USC 112 is therefore respectfully requested.

#### **Claim Rejections Under 35 U.S.C. §103:**

Claims 1, 2, 4, 5, 10-13 and 15-19 stand rejected under 35 USC 103(a) as being unpatentable over Kirksey (4,576,281) in view of Vanderbeck (3,469,750) or Truesdale et al. (5,637,238) and further in view of McCarthy (6,332,554). Reconsideration is respectfully requested. It is believed that the claims, as amended, patentably distinguishable over the cited references for the reasons hereinafter set forth.

The deficiencies of Kirksey are noted by the Examiner, however, the Examiner proposes to overcome such deficiencies by modifying the top wall 24 in Kirksey so that it is pivotally mounted on the enclosure box 22 as allegedly taught by Vanerbeck or Truesdale '238 and further by McCarthy. Kirksey, however, provides no teaching for such a modification. Contrary to the Examiner's suggestion, it is respectfully submitted that it would not be obvious to make such a modification to the enclosure box 22 of Kirksey. The Examiner has engaged in improper hindsight to support the grounds of rejection and has failed to establish *a prima facie* case of

Appl. No. 10/713,419  
Amdt. Date: 01/20/2006  
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obviousness. In *Ex parte Levengood*, 28 USPQ2d 1300 (Bd Pat App & Inter, 1993), the Board of Appeals held that:

In order to establish a *prima facie* case of obviousness, it is necessary for the examiner to present *evidence*, preferably in the form of some teaching, suggestion, incentive or inference in the applied prior art, or in the form of generally available knowledge, that one having ordinary skill in the art *would have been led* to combine the relevant teachings of the applied reference in the proposed manner to arrive at the claimed invention. (emphasis in original text)

Kirksey fails to provide such a teaching, suggestion, incentive or inference for the modification suggested by the Examiner. The top wall 24 in Kirksey is fixed. The tube 62 of the drop chute 60 extends through a hole in the top wall 24 and is held in position by a slide latch 70 mounted on the bottom surface of the top wall 24. Mounting the top wall 24 to the enclosure box 22 by way of a hinge, as suggested by the Examiner, would also require mounting a lock on the top wall 24 to secure it in a closed position, and thereby making the slide latch 70 unnecessary. Also, there would no longer be a need to have the drop chute 60 removably mounted to the top wall 24. The Examiner's proposed modifications would require substantial structural changes to the enclosure box 22 of Kirksey; structural changes that the cited prior art fails to teach, show or suggest.

Neither Vanderbeck nor Truesdale '238 teach, show or suggest the modifications proposed by the Examiner. Specifically, neither Vanderbeck nor Truesdale '238 teach, show or suggest two doors providing access to a chamber containing a sharps receptacle. In Vanderbeck, the end cap 14 encloses the electrical components chamber and is fixedly secured by screws 78. In Truesdale '238, the sub-housing 14 includes a cover 218, not a second access door as suggested by the Examiner. The cover 218 is secured to the sub-housing 14 by screws 246 and

Appl. No. 10/713,419  
Amdt. Date: 01-20-2006  
Reply to Office Action of 09-14-2005

disassembly of the cover 218 from the sub-housing 14 is discouraged (column 10, lines 33-43). It is respectfully submitted that Vanderbeck and Truesdale '238 fail to provide a basis for the modifications proposed by the Examiner, and therefore the rejection of Claims 1, 2, 4, 5, 10-13 and 15-19 under 35 USC 103(a) is not proper and it is requested that the rejection be withdrawn.

Regarding claim 3, it stands rejected under 35 USC 103(a) as being unpatentable over the references as applied to claim 2 above, and further in view of Honeycutt et al. (6,010,44). For the reasons set forth above, it is believed that the combination of Kirksey in view of Vanderbeck or Truesdale '238 and McCarthy fails to teach, show or suggest the Applicant's invention as claimed in claim 2, which claim is believed to be in condition for allowance. Consequently, claim 3, which depends therefrom, is also in condition for allowance.

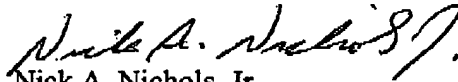
Regarding claims 6-9, 14 and 20, they stand rejected under 35 USC 103(a) as being unpatentable over the references as applied to claims 1, 11 and 19 above, and further in view of Marsh (5,647,502) or Baker, Sr. et al. (4,662,516). For the reasons set forth above, it is believed that the combination of Kirksey in view of Vanderbeck or Truesdale '238 and McCarthy fails to teach, show or suggest the Applicant's invention as claimed in claims 1, 11 and 19, which claims are believed to be in condition for allowance. Consequently, claims 6-9, 14 and 20, which depend therefrom, are also in condition for allowance.

The citation of the prior art made of record and not relied upon is noted. However, it is believed that the prior art not relied upon is no more pertinent than the applied references, and therefore a detailed discussion of the prior art not relied upon is not deemed necessary for a full and complete response to the outstanding office action.

Appl. No. 10/713,419  
Amdt. Date: 01-20-2006  
Reply to Office Action of 09-14-2005

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,



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